WP(C) 4884/2003
BEFORE
HON'BLR MR JUSTICE AMITAVA ROY

JUDGEMENT AND ORDER(ORAL)

The grievance registered is against the WT message dated 13.12.2002 of the Commissioner & Secretary to the Government of Assam, Education Department keeping in abeyance the adjustment orders pertaining to regularization of dropped/honorary teachers of the State including the petitioners. By order dated 24.6.2003 this Court while issuing notice had observed that the services of the petitioners were regularized in terms of the orders passed in Civil Rule No. 3161/1995, WP(C) No.344/2001 and Writ Appeal No.474/97 for which the impugned WT message could not affect their service conditions.

2. I have heard Mr PK Goswami, Senior Advocate for the petitioners, Mr MR Pathak, learned Standing counsel, Education Department and Mr D.Saikia, learned Standing counsel, Finance Department, for the respondents.

3. The pleaded case of the petitioners who were all Assistant Teachers of different ME schools and ME Madrassas of the State is that ,following their exclusion from the process of regularization along with others similarly situated , the All Assam Middle English Teachers Association, Guwahati approached this Court with Civil Rule No.2833/1997 and pursued the issue in Writ Appeal No.474/1997. By judgment and order dated 13.11.1998 passed in the Writ Appeal the services of the petitioners along with others involved in the proceeding was directed to be regularized. Pursuant thereto, in different phases the services of 1074 teachers were regularized by various orders. The names of the petitioners were included in the list of teachers appended to the letter dated 23.3.2002 of the Principal Secretary to the Govt.of Assam, Education Department for such regularization/provincialisation. In terms thereof and in compliance of the order dated 13.11.1998 of this Court the petitioners thereafter by order dated 1.10.2002 were regularised against vacant posts. Their salary however, was not paid and eventually by the impugned WT message the orders of their regularization were suspended.

4. No counter has been filed by the authorities of the Education Department.

5. Mr Goswami has maintained that the petitioners services having been regularised /provincialised in compliance of the order dated 13.11.1998 of this Court passed in Writ Appeal No.474/1997, they cannot in any view of the matter, be brought within the purview of the impugned WT message and therefore they are entitled to a declaration to the said effect. As the decision contained in the WT message in the facts and circumstances of the case is wholly inapplicable to the petitioners, the same is liable to be quashed so far they are concerned.

6. The learned counsel for the State respondents did not dispute the regularization/provincialisation of the petitioners services in compliance of the order dated 13.11.1998 of this Court passed in Writ Appeal No.474/1997.

7. The rival submissions have been duly considered. The uncontroverted pleaded averments in the writ petition along with the documents appended thereto unequivocally demonstrate that the regularization/provincialisation of the petitioners' services has been in compliance of the order dated 13.11.1998 passed by this Court in Writ Appeal No.474/1997. The operative portion of the above order of this Court is quoted hereinabove :-

In view of the aforesaid developments, we dispose of this appeal with a direction that the process of regularization /provincialisation of 1123 teachers dropped at the time of provincialisation of ME and ME Madrassas during the year 1991-92 would be completed within a period of 3 months from today.

For the purpose of enabling the Government to complete the process of regularization/provincialisation, the appellants association will furnish all necessary documents and particulars including names of concerned assistant teache

rs to the Director of Elementary Education, Assam, within 2 weeks from today. It will be open for the State Government to consider regularization/provincialisation of Assistant teachers dropped at the time of provincialisation of ME and ME Madrassas during the year 1991-92 in addition to 1123 Assistant teachers in case they find genuineness in the claims of such additional assistant teachers.

It is clear from hereinabove that the direction to the State respondents to regularize/provincialise the services of 1123 teachers including the petitioners was based on an undertaking and/ or on conscious decision taken by them(state respondents) to the said effect . The said order having remained unchallenged is therefore binding on the parties. The respondent authorities having acted in terms of the order of this Court being fully aware of the implications thereof are now estopped from charting a different course to the prejudice of the petitioners. Having regard to the background in which the petitioners services have been regularized, the irresistible conclusion is that the WT message dated 13.11.2002 is inapplicable to them and cannot be enforced to their detriment.

8. In the result, the said message vis a vis the petitioners is adjudged to be non est and is quashed. The interim order of this Court dated 24.6.2002 is made absolute. The petition stands allowed. No costs.